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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL FORD, et al.,

Plaintiffs,

v.

BEST BUY CO., INC., et al.,

Defendants.

Case No. 18-cv-02770-BLF

**ORDER ADDRESSING PENDING
MOTIONS**

[Re: ECF 45, 47, 56, 59, 61]

This order resolves several administrative motions filed by Plaintiffs (ECF 56, 58, 61), and terminates without prejudice the substantive motions filed by Defendants (ECF 45, 47) in light of amendments to Plaintiffs' pleading.

Operative Pleading and Remaining Parties:

Plaintiffs Michael Ford and Rudolph Dubrovsky filed this putative class action on May 10, 2018, alleging claims against Defendants 24/7, Inc., Best Buy Co., Inc., Delta Airlines, Inc., and [24]7.AI, Inc. *See* Compl., ECF 1. Plaintiffs assert that Defendants failed to safeguard customers' personally identifiable data and failed to inform customers regarding a data breach which exposed class members to risk of misuse of their personal information. *See id.*

Plaintiffs filed a first amended complaint ("FAC") on June 5, 2018, terminating 24/7, Inc. as a defendant. *See* FAC, ECF 15.

Plaintiffs filed a second amended complaint ("SAC") on September 26, 2018. *See* SAC, ECF 57. Plaintiffs did not seek leave of the Court to file the SAC, nor did Plaintiffs seek written consent of all parties. *See* Fed. R. Civ. P. 15(a)(2) (Except for amendments as of right pursuant to Rule 15(a)(1), "a party may amend its pleading only with the opposing party's written consent or the court's leave."). However, as no party has objected, the Court accepts the SAC as the operative pleading in this case.

1 The SAC terminates Best Buy Co., Inc. and Delta Airlines, Inc. as defendants in this
2 action, leaving [24]7.AI, Inc. as the only remaining defendant. Accordingly, the Clerk SHALL
3 MODIFY the docket to reflect the termination of Best Buy Co., Inc. and Delta Airlines, Inc. as of
4 September 26, 2018.

5 In light of the above, the parties' stipulation to dismiss Delta Airlines, Inc. (ECF 59) is
6 TERMINATED AS MOOT.

7 Administrative Motion to Relate Cases (ECF 56):

8 Plaintiffs have filed an administrative motion (ECF 56) to consider whether the present
9 case should be related to *Copeland v. [24]7.AI, Inc.*, Case No. 5:18-cv-05859-SvK, currently
10 assigned to Magistrate Judge van Keulen. The complaint in *Copeland*, which was filed on
11 September 24, 2018, asserts a putative class action based on the same data breach described in the
12 present action. The four claims for relief asserted in *Copeland* also are asserted in the present
13 action. The only named defendant in *Copeland* action is [24]7.AI, Inc., the same defendant sued
14 in the present action. Defendant [24]7.AI, Inc. has filed a response (ECF 58) agreeing that the
15 cases should be related.

16 It appears to the Court that *Copeland* is related to the present action within the meaning of
17 Civil Local Rule 3-12. Plaintiffs have filed a certificate of service on counsel for the plaintiff in
18 *Copeland*, as required under Civil Local Rule 3-12(b), and no objection to relation of the cases has
19 been received by the Court.

20 Accordingly, the administrative motion to relate cases is GRANTED. The Clerk SHALL
21 reassign *Copeland v. [24]7.AI, Inc.*, Case No. 5:18-cv-05859-SvK to the undersigned as related to
22 the above-captioned case, *Ford v. [24]7.AI, Inc.*, 5:18-cv-02770-BLF.

23 Stipulation to Continue Case Management Conference, Permit Filing of Consolidated
24 Amended Complaint, and Continue Hearing on Motion to Transfer (ECF 61):

25 Plaintiffs and Defendant [24]7.AI, Inc. have filed a stipulation (ECF 61) to permit
26 Plaintiffs in the present case and the plaintiff in *Copeland* to file a consolidated amended
27 complaint following relation of the cases. The parties also request that the Court vacate the Initial
28 Case Management Conference, currently set for October 25, 2018, and continue the hearing on

1 Defendant [24]7.AI, Inc.'s motion to transfer, currently set for hearing on November 1, 2018.

2 Those stipulated requests are GRANTED IN PART as follows.

3 The Court construes the request for leave to file a consolidated amended complaint to be a
4 request for consolidation of the present case and *Copeland* and for leave to file an amended
5 consolidated complaint. That request is GRANTED.

6 The request to vacate the Initial Case Management Conference is GRANTED IN PART.
7 Rather than vacating the Initial Case Management Conference, the Court CONTINUES the Initial
8 Case Management Conference to December 20, 2018, at 11:00 a.m.

9 The Court agrees that in light of the impending consolidation and amendment to the
10 pleading, it does not make sense to go forward with the November 1, 2018 hearing on Defendant
11 [24]7.AI, Inc.'s motion to transfer. Rather than continuing that hearing, however, the Court will
12 TERMINATE the motion to transfer WITHOUT PREJUDICE to refiling once the amended
13 consolidated complaint has been filed. In the Court's view, the transfer motion should be
14 evaluated based on the operative pleading and after all parties have had an opportunity to brief it.

15 The Court notes that in addition to filing its own motion to transfer (ECF 47), Defendant
16 [24]7.AI, Inc. joined in the motion to dismiss, transfer, or stay (ECF 45) filed by Delta. Because
17 Delta has been terminated as a defendant, Delta's motion and the joinder in that motion are hereby
18 TERMINATED AS MOOT, and the Court will not consider arguments presented in Delta's
19 motion. Those arguments may be reasserted by [24]7.AI, Inc. in its own motion to dismiss,
20 transfer, or stay.

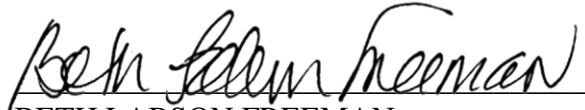
21 Summary of Rulings:

- 22 (1) The operative pleading in this case is the SAC (ECF 57) filed on September 26,
23 2018.
- 24 (2) The Clerk SHALL MODIFY the docket to reflect the termination of Best Buy Co.,
25 Inc. and Delta Airlines, Inc. as of September 26, 2018.
- 26 (3) The parties' stipulation to dismiss Delta Airlines, Inc. (ECF 59) is TERMINATED
27 AS MOOT.
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- (4) The administrative motion to relate cases (ECF 56) is GRANTED. The Clerk SHALL reassign *Copeland v. [24]7.AI, Inc.*, Case No. 5:18-cv-05859-SvK to the undersigned as related to the above-captioned case, *Ford v. [24]7.AI, Inc.*, 5:18-cv-02770-BLF.
- (5) The stipulated request (ECF 61) for various administrative relief is GRANTED IN PART. The request to consolidate the present case with *Copeland* and to file a consolidated amended complaint is GRANTED.
- (6) The Initial Case Management Conference is CONTINUED from October 25, 2018 to December 20, 2018.
- (7) Defendant [24]7.AI, Inc.'s motion to transfer (ECF 47) is TERMINATED WITHOUT PREJUDICE to refiling once the amended consolidated complaint has been filed.
- (8) Defendant Delta Airlines, Inc.'s motion to dismiss, transfer, or stay (ECF 45) and Defendant [24]7.AI, Inc.'s joinder in that motion are TERMINATED AS MOOT, without prejudice to [24]7.AI, Inc.'s reassertion of the arguments in its own motion to dismiss, transfer, or stay.

IT IS SO ORDERED.

Dated: October 17, 2018


BETH LABSON FREEMAN
United States District Judge